



SOLAR ENERGY PURCHASE AGREEMENT

BETWEEN

BLACK HILLS POWER, INC.

("COMPANY")

AND

~~SDSun II Fall~~

River Solar

LLC

("SELLER")

December ~~June 20~~ June, 20186

Solar Energy Purchase Agreement

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Solar Energy Purchase Agreement

Solar Energy Purchase Agreement

Between

Black Hills Power, Inc.

and

~~SD Sun LLC~~ ~~SD Sun II~~ ~~Fall River~~
Solar LLC

This Solar Energy Purchase Agreement (this “PPA”) is made this 20th day of ~~June~~ ~~December~~ ~~June~~ 2018~~6~~, by and between (i) Black Hills Power, Inc., a South Dakota Corporation, with a principal place of business at 625 Ninth Street, Rapid City, South Dakota, 57701 (“Company”), and (ii) SDSun II LLC, a Utah limited liability company with a principal place of business at 1612 E Bainbridge Road, Sandy, Utah 84092 (“Seller”). Company and Seller are hereinafter referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS Seller desires to develop, design, construct, interconnect, own, operate and maintain the Facility as defined herein; and

WHEREAS Seller desires to sell and deliver and Company desires to accept and receive certain products and services delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

Article 1 – Rules of Interpretation

1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meaning set forth in Exhibit A-Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well-known and generally accepted technical or trade meanings.

(B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA; *provided, however, that* in the event of a conflict with the terms of this PPA and the Exhibits, the PPA shall control; and (4) use of the words “include” or “including” or similar words shall be interpreted as

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“include without limitation” or “including, without limitation.”

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(C) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

1.2 Interpretation with Other Agreements.

(A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into the electric delivery system. Seller shall contract separately for interconnection services in accordance with the applicable Transmission Provider's interconnection policies, procedures, and/or tariffs. Seller acknowledges that any Interconnection Agreement Seller enters into is a separate contract and that (i) this PPA is not binding on the Transmission Authority, (ii) this PPA does not create any rights between Seller and the Transmission Authority, and (iii) the Interconnection Agreement does not modify the Parties' rights and obligations under this PPA. Seller agrees that any applicable Transmission Authority shall be deemed to be a separate and unaffiliated contracting party regardless whether such Transmission Authority is Company or an Affiliate of Company.

(B) This PPA does not provide for the supply of House Power. Seller shall contract with the Local Provider for the supply of House Power. Seller acknowledges that obtaining House Power is a separate contract and that (i) this PPA is not binding on the Local Provider, (ii) this PPA does not create any rights between Seller and the Local Provider, and (iii) the House Power contract does not modify the Parties' rights and obligations under this PPA. Seller agrees that the Local Provider shall be deemed to be a separate and unaffiliated contracting party regardless whether the Local Provider is Company or an Affiliate of Company. Subject to Seller's right to self-generate and consume energy concurrently generated by the Facility or as otherwise allowed by Applicable Law, Seller shall obtain House Power exclusively from the Local Provider.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

1.4 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms of conditions of this PPA, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment

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of any such terms, conditions, or rights, but the same shall be and remain at all time in full force and effect.

Article 2 – Term and Termination

This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until the Scheduled Termination Date, subject to early termination or extension as provided in this PPA or otherwise agreed to by the Parties. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations, or responsibilities of the Parties, and (iii) address any remedies or indemnifications, arising prior to termination.

Article 3 – Facility Description

31 Description. Seller shall construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C-Facility Description. A scaled map that identifies the Site, the location of the Facility, Interconnection Point, Interconnection Facilities, the Point of Delivery and other important facilities, is included in Exhibit C-Facility Description.

32 General Design of the Facility.

(A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practice(s) and the Interconnection Agreement.

(B) The Facility shall include all equipment necessary to successfully interconnect with the Transmission Authority's System for the delivery of the Facility's output to the Point of Delivery.

(C) The Facility shall include all equipment and telecommunications capabilities necessary to communicate with Company's SCADA System, consistent with Company's cyber-security and information security policies and procedures.

(D) The Facility shall include all equipment specified in Exhibit C- Facility Description or otherwise necessary to fulfill Seller's obligations under this PPA.

Article 4 – Implementation

4.1 Project Development.

(A) No later than 60 Days prior to start of construction, Seller shall complete a typical solar development environmental investigation of the Site and shall disclose to Company any Environmental Contamination identified in that investigation and confirm that such Environmental Contamination has been remediated or is capable of being remediated and that the Site remains appropriate for its intended use by Seller. Seller shall promptly inform Company if due to any Environmental Contamination Seller

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is constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) that would allow Seller to fully perform under this PPA. Upon request, Seller shall provide Company a copy of the investigation report and any backup data. Throughout the Term, Seller shall ensure that any Environmental Contamination identified at the Facility or Site is promptly remediated. Seller shall promptly disclose to Company the presence of any such Environmental Contamination or the existence of any enforcement, legal, or regulatory action or proceeding relating to such alleged violation or alleged presence of Environmental Contamination.

(B) Seller shall at its own expense enter the Construction Contract and all other major contracts necessary to the successful development, construction, operation of and delivery from the Facility with qualified and experienced contractors. Upon written request by Company, Seller shall provide to Company, copies of all major contracts pertaining to the Facility.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to company in a form agreed upon by the Parties advising Company of the current status of each Construction Milestone, any significant developments or delays along with an action plan for making up delays, and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility ~~Lender/Leader~~ relating to status, progress and development of the project, and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant contractors available to Company in order to keep Company fully informed on the status of the development. For the purposes of this Article 4.1(c) "relevant contractors" shall include balance of plant and/or Engineering, Procurement, and Construction contractor(s), along with any contractor with a contract value in excess of \$500,000.

(D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility for compliance with this PPA, *provided, however, that* Company shall comply with all of Seller's applicable safety and health rules and requirements. Company's monitoring of the Facility shall not be construed as inspections or endorsing the design thereof nor as any express or implied warranties including performance, safety, durability, or reliability of the Facility.

(E) Seller shall obtain and pay for all Permits necessary for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of any output from the Facility to Company. Seller shall keep Company informed as to the status of its permitting efforts and shall provide Company the opportunity to review and comment on major applications for, draft and final Permits. Seller shall promptly inform Company of any Permits it is unable to obtain, that are delayed, limited, suspended, terminated or otherwise constrained in a way that will limit, reduce, interfere with or preclude Seller's ability to perform its obligations under this

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PPA, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA. Seller shall provide Company with written recommendations to overcome any such issue(s) with any Permits to allow Seller to fully perform under this PPA. Company shall have the right to inspect and obtain copies of all Permits held by Seller.

(F) Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.2 Commercial Operation. Subject to extension as authorized in this PPA, the Facility shall achieve Commercial Operation no later than the Commercial Operation Milestone; *provided, however, that* Seller shall not be obligated to establish a Commercial Operation Date that is earlier than the Commercial Operation Milestone and Company shall not be obligated to accept a Commercial Operation Date that is earlier than the Commercial Operation Milestone. In its efforts to achieve the Commercial Operation Milestones set forth in Exhibit B-Milestones.

4.3 COD Conditions. Seller shall provide Company a Notice of the date Seller believes the Facility has achieved Commercial Operation along with all supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have up to 10 Business Days to review such evidence and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions, *provided, however, that* such Notice shall be deemed accepted by Company if Company fails to object within such time period. Seller may provide Notice of completion of the COD Conditions on an individual and incremental basis pending resolution of any objections, *provided, however, that* Company shall in all cases have up to 10 Business Days to review and object to each Notice. The COD Conditions are:

(A) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all necessary and material Permits have been obtained and are in full force and effect, (2) Seller is in compliance with this PPA in all material respects, and (3) the Facility is available to commence normal operations in accordance with Seller's operating agreements, Construction Contract, and applicable manufacturers' warranties; (4) the Facility has been registered with the Transmission Authority, (5) Seller is obligated under and in material compliance with the Interconnection Agreement, (6) the Facility is fully interconnected to the Transmission Authority's System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the Transmission Authority, without experiencing any abnormal or unsafe operating conditions on any interconnected system, (7) Seller has completed any testing of the Facility and Interconnection Facilities required by the Interconnection Agreement; (8) complies with any requirements set forth in South Dakota law; and (9) Seller has made all other arrangements necessary to deliver the output of the Facility to the Point of Delivery;

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(B) an independent registered professional engineer's certification has been obtained by Seller and provided to Company stating that the Facility has been completed in all material respects, except for punch list items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose;

(C) Seller has demonstrated (1) the reliability of the Facility's communications systems and communication interface with Company's EMCC and the Facility is capable of receiving and reacting to signals from Company's SCADA System, and (2) all AGC equipment is installed and operational. However, both parties recognize that solar photo-voltaic is not ~~dispatchable~~ dispatchable resource; and

(D) at least 95% of the Solar Units and associated equipment sufficient to allow such Solar Units to generate and deliver Solar Energy to the Point of Delivery have been completed.

4.4 Test Energy.

(A) Seller shall provide Company and Transmission Authority with the information necessary to have the Facility registered with the Transmission Authority for inclusion in any generation modeling maintained by the Transmission Authority, sufficiently in advance to allow the Facility to be registered in such model at least four months prior to generating any Test Energy. Upon receipt of such information, Company will cooperate reasonably to assist in the registration of the Facility to allow generation of Test Energy.

(B) Prior to the COD, Seller shall coordinate the production and delivery of Test Energy with Company, with not less than five Days' Notice, or such other Commercially Reasonable prior Notice as Company may reasonably request. The Parties shall cooperate to facilitate Seller's testing of the Facility necessary to satisfy the COD Conditions. Company shall only be required to accept delivery of Test Energy required to satisfy the COD Conditions. Company shall pay the Test Energy Rate for all Test Energy delivered prior to COD.

Article 5 – Delivery

5.1 Electric Delivery Arrangements. Seller shall be responsible for making, maintaining and paying the costs associated with the interconnection of the Facility to the Transmission Authority's System. Seller shall comply with the Transmission Authority's requirements for the interconnection. The Interconnection Request shall request Network Resource Interconnection Service or its equivalent. Seller shall cooperate reasonably in any request by Company to assist in Company's efforts to have the Facility approved as a Network Resource or equivalent classification.

(A) Seller authorized Company to contact and obtain information concerning the Facility and Interconnection Facilities directly from any applicable

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Transmission Authority and, upon request, Seller shall confirm such authorization in writing to such Transmission Authority or any applicable transmission owners in such form as requested by Company or the Transmission Authority.

(B) Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver the output from the Facility to the Point of Delivery.

(C) Company shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to transmit and deliver the output from the Facility beyond the Point of Delivery. If at any time during the Term, the entity owning the transmission facilities at the Point of Delivery changes or the facilities at the Point of Delivery cease to be subject to the Transmission Tariff, then the Parties shall cooperate in good faith to amend this PPA in a manner to facilitate the delivery of output from the Point of Delivery to Company's customers at the least possible cost to Company.

52 Electric Metering Devices.

(A) All Electric Metering Devices used to measure energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Company under this PPA.

1. For purposes of this PPA, meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided, however, that* the Operating Committee may revise this loss adjustment based on actual experience.

2. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Company the opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), *provided, however, that* the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request, the installing Party shall conduct retests requested by the other Party. The actual cost of any retest shall be borne by the Party requesting the test, unless, upon such retest, Back-Up Metering is inaccurate by more than one percent, in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If an Electric Metering Device or Back-Up Metering, fails to

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register, or if the measurement is inaccurate by more than one percent, an adjustment shall be made correcting all measurements as follows:

1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering, if installed, to determine the amount of such inaccuracy, *provided, however, that* Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent, the Parties shall use the best available information for the period of inaccuracy, adjusted as agreed by the Parties for losses to the Point of Delivery.

2. If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) 180 Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

3. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by the Company, Company shall use the corrected measurements as determined in accordance with this Article 5.2 to re-compute the amount due for the period of the inaccuracy and shall subtract the previous payments made by Company for this period from such re-computed amount. The net difference shall be reflected as an adjustment on the next regular bill in accordance with Article 9.

Article 6 – Conditions Precedent

6.1 Company CPs.

(A) To the extent Seller files a complaint or other State Regulatory Agency proceeding related to either the terms of the PPA or the Company's avoided cost calculation, Company may request that the State Regulatory Agency void the PPA, modify the avoided cost calculation and pricing provisions of the PPA, or take other action as may be appropriate under the circumstances.

(B) In the event that Company requests that the State Regulatory Authority take any action described in Article 6.1(A) above, the Parties agree to be bound by the final decision of the State Regulatory Agency, if any, and further agree that the PPA shall be modified to be consistent with the final decision of the State Regulatory Agency, if any. For the purposes of this Article 6.1(B), "final decision" means a final order of the State Regulatory Agency which is either non-appealable, or for which all rights of appeal have been exhausted.

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6.2 Seller CPs. Company shall have the right to terminate this PPA, without any further financial or other obligation as a result of such termination, by Notice to the Seller following the failure of Seller to satisfy any of the following Construction Milestones by the required date, subject to a 60 day period for Seller to cure its failure (other than the Commercial Operation milestone, which shall be subject to the cure period and procedures set forth in Article 12.1(G)) to the reasonable satisfaction of Company

(A) Seller shall have obtained site control by September 1, 2017~~6~~;

(B) Seller shall have executed major procurement contracts, the Construction Contract, and the Interconnection Agreement needed to construct the Facility by July 1, 2018~~7~~;

(C) The step-up transformer shall have been delivered and installed at the site by June 1, 2018; and

(D) Commercial Operation shall be achieved by ~~September~~
November/December 31, 2018-2019~~rv11~~

Article 7 – Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Facility, deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase at the Point of Delivery, the energy and the capacity required by this PPA. Seller shall not curtail or interrupt deliveries from the Facility as required by this PPA for economic reasons of any type whatsoever.

(B) Title and risk of loss of the transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.

7.2 Committed Solar Energy. Seller covenants to deliver the Committed Solar Energy to the Point of Delivery subject to Seller's rights in Section 8.1(C).

7.3 AGC.

(A) Beginning on the Commercial Operation Date, Company shall dispatch Facility through the EMCC ACC system.

(B) Company may notify Seller, by Electronic signal or through use of the AGC Set Point, to curtail the delivery of Solar Energy to Company from the Facility and to the Point of Delivery, for any reason and in its sole discretion and Seller shall promptly comply with such notification.

(C) The AGC Set-Point is calculated by the EMCC AGC system and communicated electronically through the SCADA System. Seller shall ensure

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that, throughout the Term, the SCADA signal is capable of functioning on all AGC Set Points within the margin of error specified in the solar facility's control system manufacturer's energy set point margin of error.

(D) Seller shall ensure that Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.4 Compensation for Other Products and Services.

(A) Seller shall retain any RECs associated with any Solar Energy delivered to Company.

(B) Seller shall make available to Company all Generation Benefits and Ancillary Services associated with the Facility at no additional charge under this PPA. Any compensation Seller receives under the Interconnection Agreement or otherwise for Generation Benefits or Ancillary Services associated with the Facility and its output shall be provided to Company at no additional cost to Company under this PPA. Any benefit related to the Interconnection Agreement not identified in the preceding sentence or otherwise addressed by this Agreement shall be retained by Seller. Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually agreed mechanism, for any compensation that Seller receives for Generation Benefits or Ancillary Services.

1. Seller shall use Commercially Reasonable Efforts to maximize the availability of Generation Benefits and Ancillary Services available from the Facility, *provided, however, that* Seller shall not be required to make any extraordinary capital expenditures or incur any significant increased operating expenses in connection with such efforts.

2. In the event a Governmental Authority or Transmission Authority implements new or revised requirements for generators to create, modify, change, or supply Ancillary Services, requiring Seller to install additional equipment after the Commercial Operation Date to meet such requirements, then Seller shall be allowed to reduce the amount owed to Company for Ancillary Services by an amount sufficient to recover the cost of such additional equipment, *provided, however, that* the amount of credit shall in no event be less than zero. Any excess of such cost over the amount of the credit in any year shall instead be carried forward as a reduction of the amount of the credit in subsequent years.

Article 8 – Payment Calculations

8.1 Solar Energy Payment Rate.

(A) Prior to the Commercial Operation Date, Company shall pay Seller for Test Energy delivered to the Point of Delivery pursuant to Section 4.4 at the Test Energy Rate. Seller shall be entitled to no Compensable Curtailment Energy payment prior to the COD in connection with Test Energy.

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(B) Commencing on the Commercial Operation Date, Company shall pay Seller the Solar Energy Payment Rate for Solar Energy to the Point of Delivery.

(C) In the event that the Solar Energy in any Commercial Operation Year (including any Compensable Curtailment Energy) exceeds 115% of the Committed Solar Energy ("Excess Solar Energy"), Company shall have the option to either (i) pay Seller the Solar Energy Payment Rate for all such Excess Solar Energy, or (ii) elect not to accept any Excess Solar Energy.

1. Seller shall notify Company upon Seller's delivery of Solar Energy hereunder that exceeds 110% of the Committed Energy for a Commercial Operation Year. Company shall elect within 10 Business Days of Seller's Notice to either accept or decline the Excess Solar Energy after the date of Company's election and through the balance of such Commercial Operation Year.

2. If Company elects not to accept Excess Solar Energy, Seller shall have the right to sell such Excess Solar Energy (including associated RECs) to one or more third parties until the end of the applicable Commercial Operation Year, after which the Parties' obligations shall resume pursuant to this PPA, *provided, however, that* Seller shall be solely responsible for arranging transmission service and delivery arrangements to such third party at no cost to Company under this PPA.

8.2 Curtailment Energy Payment Rate.

(A) If (i) delivery of Solar Energy is curtailed by Company pursuant to Section 7.3, or (ii) Company elects to utilize non-firm transmission service to deliver Solar Energy from the Point of Delivery and such non-firm transmission service is restricted or reduced by the applicable transmission service provider, except to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place, and (iii) any such reduction is not included as a Non-Compensable Curtailment, then

1. the Parties shall determine the quantity of Solar Energy that would have been produced by the Facility (i) during those periods of time when the Facility is on AGC and the AGC Set-Point is set at a level that will not allow the entire Facility Nameplate Capacity to be deliverable by determining the difference between Potential Energy and the delivered Solar Energy, and (ii) during those periods of time when the Facility is not on AGC or the AGC Set-Point is set at a level that will allow the Facility Nameplate Capacity to be deliverable by determining the amount that would have been available for delivery had its generation not been so curtailed ("Compensable Curtailment Energy").

2. Compensable Curtailment Energy shall be the number

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of MWh represented by the Potential Energy less the Solar Energy actually delivered and measured by the Electric Metering Devices (and excluding any Non-Compensable Curtailments) during the period of curtailment.

3. Company shall pay to Seller for such Compensable Curtailment Energy net of any Non-Compensable Curtailments (i) all amounts that Seller would have received from Company under this PPA had such Compensable Curtailment Energy actually been delivered plus (ii) the amount of any associated Tax Benefits to which Seller would have been entitled but did not receive as a result, on a grossed up basis; provided, however, that Seller has elected to receive PTCs. For the avoidance of doubt, Seller shall not be entitled to recover any Tax Benefits to the extent Seller was not entitled to receive PTCs had the Compensable Curtailment Energy actually been delivered.

(B) For purposes of determining Compensable Curtailment Energy, the amount of Potential Energy at any given time shall be calculated using the best-available data and methods to determine an accurate representation of the amount of Solar Energy.

1. To the extent available, Company agrees to use Seller's real time Park Potential communicated to Company through the SCADA System as the proxy for Potential Energy, except to the extent that Park Potential is demonstrated not to accurately reflect the Potential Energy (Plus or minus 2% over a period of one month).

2. During those periods of time when the Park Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use the best available data obtained through Commercially Reasonable methods to determine the Potential Energy.

3. Seller shall be entitled to sell any curtailed energy to third parties to whom Seller is able successfully to transact and deliver, *provided, however, that* the net amount realized for such sale shall offset amounts owed by Company for Compensable Curtailment Energy. Company shall reasonably cooperate with any such sales, and Seller accepts sole responsibility to obtain transmission rights to deliver such energy at no cost to Company. Seller accepts all risk of the unavailability of transmission rights during any curtailment.

(C) Notwithstanding anything in this Article to the contrary, curtailments or reductions of delivery for any of the following reasons shall constitute "Non-Compensable Curtailments" and shall be excluded from Compensable Curtailment Energy, and no payment shall be due Seller under paragraph (A) above for curtailments of delivery of Solar Energy arising out of or resulting from

1. an Emergency;

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2. any action taken under the Interconnection Agreement;
3. the restriction or reduction of transmission service by the applicable transmission service provider to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place;
4. Maintenance outages, whether planned or unplanned, of any part of the transmission system or any testing of the transmission system;
5. the lack of available transmission for generation from the Facility to the Point of Delivery;
6. Seller's failure to maintain in full force and effect any Permit to construct and/or operate the Facility; and
7. Seller's failure to maintain AGC capability or its failure or refusal to respond to an AGC instruction from the EMCC.

Article 9 – Billing and Payment

9.1 Billing.

(A) The billing period shall be the calendar month. Within ten Days after Seller's request, Company will provide to Seller a statement containing the applicable billing parameters based on Company's reading of the Electric Metering Devices and Company's assessment of the amount due during the previous calendar month. No later than 15 Business Days after the end of each month, Seller shall submit an invoice to Company in a form and by a method mutually agreed to by the Parties showing the payment amount due Seller during the previous calendar month, specifying the products and services provided, all billing parameters, rates and factors, and any other data reasonably relevant to the calculation of payments due to Seller.

(B) Seller shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies. Billing disputes shall be resolved in accordance with Section 9.3.

(C) All billing data based on energy delivered to Company shall be based on meter readings in accordance with Section 5.2.

9.2 Payment. Unless otherwise specified herein, undisputed payments shall be payable by check or electronic funds transfer, as designated by the owed Party, on or before the 15th Business Day following receipt of the invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the 15th Business Day following receipt of the billing invoice.

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(A) If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the prime rate or interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date).

(B) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller pursuant to this PPA.

(C) Seller and Company shall net their obligations to each other under this PPA, and payment of the net amount will discharge all mutual undisputed obligations between the Parties.

9.3 Billing Disputes. Either Party may dispute invoiced amounts, but shall pay at least the undisputed portion on or before the date due. To resolve any billing dispute, the Parties shall use the procedures set forth in Article 13. When the billing dispute is resolved, the Party owing shall pay the amount owed within five Business Days of the date of such resolution, without late payment interest except to the extent that it shall have been established that the amount owed was not disputed in good faith, in which case late payment interest charges shall be calculated on the amount found not to have been disputed in good faith in accordance with the provisions of Section 9.2.

Article 10 – Operations and Maintenance

10.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices and the Operating Procedures. During daylight hours and/or when the Facility is capable of operation, personnel shall be available at all times via telephone or other electronic means with (i) the capability of remotely operating and stopping the Facility within 10 minutes, and (ii) the ability to be present at the Site within 60 minutes.

(B) Seller shall comply with the requirements of NERC, ERO, Transmission Authority, FERC, or successor organizations, Company requirements, Governmental Authority, and Good Utility Practice in the operation of the Facility.

1. To the extent that the actions of Seller or the Facility contributes in whole or in part to actions that result in monetary penalties being assessed to Company by NERC, ERO, Transmission Authority, FERC, or other Governmental Authority, Seller shall reimburse Company for all such monetary penalties proximately caused by Seller or the Facility.

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(C) Seller shall be responsible for providing accurate and timely updates on the current availability of the Facility to Company's EMCC. Seller shall provide to Company a day-ahead availability forecast in accordance with Exhibit H- Operating Standards (AGC Protocols, Data Collection). Seller acknowledges that such forecasting is consistent with the reporting requirements required for compliance with NERC standards intended to maintain reliability. Seller, as the generator, is primarily responsible for complying with the NERC standards and to report the information to Transmission Authority, ERO or other reliability coordinator. Company agrees to provide the forecasted information to the reliability coordinator on Seller's behalf, *provided, however, that* Seller shall remain responsible to ensure the reliability and accuracy of forecasts and any changes to the real-time or forecast availability of the Facility.

10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice and relevant equipment manufacturers' requirements. Seller shall coordinate its regular maintenance requirements for the Facility with Company. Maintenance Schedules shall be provided to Company in writing and sufficiently in advance for Commercially Reasonable review, and shall be subject to Company's Commercially Reasonable approval ("Maintenance Schedule").

(B) Except as otherwise agreed to by Company, Seller shall minimize the amount of scheduled maintenance during On-Peak Months to the full extent consistent with Good Utility Practices. During any Business Day of an On-Peak Month, Seller shall use Commercially Reasonable Efforts to (i) maximize the amount of Solar Energy produced by the Facility, and (ii) minimize the extent and duration of Forced Outages.

(C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one hour after the Forced Outage occurs. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage unless relieved of this obligation by Company's EMCC for the duration of each Forced Outage.

10.3 Books and Records.

(A) Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Facility with records of production for each clock hour; changes in operating status; Forced Outages; information required by Applicable Law, Governmental Authority, Transmission Authority, or the ERO in the prescribed format; and other information reasonably requested by Company.

(B) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by

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Governmental Authorities, Transmission Authority, NERC or ERO as applicable. All records of Seller pertaining to the operation of a Facility shall be maintained on the premises of the Facility or such other location as is mutually agreed to by the Parties.

(C) Each Party shall keep all books and records necessary for metering, billing and payment and shall provide the other Party Commercially Reasonable access to those records.

(D) Company may audit and examine from time to time upon request and during normal business hours: (i) Seller's operating procedures, (ii) equipment manuals, Operating Records, (iii) and data kept by Seller relating to transactions under and administration of this PPA. Seller shall maintain all such records at the Facility or some other mutually-agreeable location and shall cooperate with Company's audit rights under this Section.

10.4 Operating Committee and Operating Procedures.

(A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility. Operating Committee representatives shall be included in Exhibit D-Notices.

1. The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this PPA, to address matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties.

(B) The Operating Committee shall review the requirements for AGC from time to time after the date hereof and may agree on modifications hereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.

(C) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes, *provided, however, that* except to the extent explicitly provided for in this PPA, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this PPA.

10.5 Access to Facility. Appropriate representatives of Company shall have access to the Facility with Commercially Reasonable prior notice, to read meters and perform inspections as may be appropriate to facilitate the performance of this PPA. While at this Facility, such representatives shall observe such Commercially Reasonable safety precautions as may be required by Seller and shall conduct

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themselves in a manner that will not interfere with the operation of the Facility.

10.6 Accreditation. Seller shall complete at its own expense all applicable testing and reporting requirements for the Facility, including any required capacity testing.

10.7 Real Time Data.

(A) Seller shall communicate all data necessary for Company to integrate the Facility into Company's EMCC in real time through the Facility's SCADA System in accordance with the AGC Protocols. Seller shall maintain the Facility's SCADA System so that it is capable of interfacing with and reacting to Company's AGC Set-Point and responding to signals from the Company's EMCC in accordance with the AGC Protocols.

1. Seller shall use Commercially Reasonable Efforts to adjust the real time Park Potential when Company communicates to Seller a measured difference of plus or minus two percent between the metered Solar Energy, during a time where there was no AGC Set-Point, and Park Potential.

2. In the event that Company reasonably concludes that (i) Seller is not (i) providing the data required by this Section, (ii) interfacing with and reacting to Company's AGC Set-Point as required by this PPA, and/or (iii) providing Park Potential data within the required margin of error, then upon Notice from Company, Seller shall, at Seller's expense, take those actions necessary to fully comply with this paragraph. Upon Seller's request, Company shall cooperate with Seller in taking any such actions.

(B) From and after the Commercial Operation Date, Seller shall provide Company, at Seller's expense, real time unit performance and meteorological data at the Facility in accordance with Exhibit H- Operating Standards (AGC Protocols, Data Collection) for the Term of this PPA. Seller shall undertake to maintain Seller-owned data collection systems which are compatible with Company's PI. Seller shall ensure that real time communications capabilities are available and maintained for the transmission to Company's PI. Seller shall ensure that all meteorological equipment at a minimum meets the specifications set forth in Exhibit H-Operating Standards (AGC Protocols, Data Collection). Company shall be entitled to disclose data gathered through the Company's PI to third parties. Company shall have the right to disclose data gathered through the Company's PI system publicly *provided, however, that* such data is (i) masked to obscure the origin of the data and (ii) aggregated so that the data cannot be correlated and used by competitors of Seller and the supplier of the Solar Units.

Article 11 – Security for Performance

11.1 Security Fund.

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(A) No later than ~~December 31~~~~February~~~~October 15, 2018~~⁷⁶, Seller shall^[RV2] establish, fund, and maintain a Security Fund that is available to pay any amount due to Company pursuant to this PPA, and to provide Company security that Seller will satisfy its obligations under this PPA.

1. The Security Fund shall equal the Pre-COD Security Fund up to the COD and the Post-COD Security Fund on and after the COD and throughout the Term.

2. Seller shall replenish the Security Fund within 15 Business Days after Company makes a draw on the Security Fund as authorized by this PPA, up to the required amount, *provided, however, that* Seller shall not be required to replenish the Security Fund to a level in excess of the remaining amount of the applicable Damage Cap. Notwithstanding the foregoing, Seller shall replenish all amounts drawn from the Security Fund in respect of damages described in Section 12.3(C).

(B) Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company pursuant to this PPA, including any damages due to Company and any amounts for which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts due to it from any form of security to the extent available pursuant to this Section and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(C) The Security Fund shall be maintained at Seller's expense, shall be originated by or deposited in a financial institution or company ("Issuer") satisfying the requirements of this Section, and shall be in the form of one or more of the following instruments:

1. The Security Fund may be in the form of an irrevocable standby letter of credit in the form and substance of Exhibit G-1-Letter of Credit, and any material changes to such Exhibit shall be subject to review and approval by Company at its sole discretion (the "Letter of Credit").

a. The Issuer for the Letter of Credit shall have and maintain an unsecured bond rating (unenhanced by third-party support) equivalent to A- or better as determined by all rating agencies that have provided such a rating, and if ratings from either Standard & Poor's and Moody's are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company. If such rating is equivalent to A-, the Issuer must not be on credit watch or have a negative outlook by any rating agency.

b. The Letter of Credit must be for a minimum term

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of 360 Days. Seller shall give Company at least 30 Days advance Notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit or other authorized security for additional consecutive terms of 360 Days or more (or, if shorter, the remainder of the Term) more than 30 Days prior to each expiration date of the security. If the Letter of Credit or other security is not renewed or extended at least 30 Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the security and to place the amounts so drawn, at Seller's cost and with Seller's funds, in an interest bearing escrow account in accordance with sub-paragraph (2) below, until and unless Seller provides a substitute form of such security meeting the requirements of this Section.

2. The Security Fund may be in the form of United States Currency, in which Company holds a first and exclusive perfected security interest, deposited with an Issuer who is a state or federally-chartered commercial bank with operations in the State in which the Facility is located (or such other escrow agent acceptable to Company in its sole discretion) in an account under which Company is designated as beneficiary with sole authority to draft from the account or otherwise access the security (the "Escrow Account"). The Escrow Account shall be established pursuant to an Escrow Agreement substantially in the form attached as Exhibit G-3-Escrow Agreement. Funds held in the Escrow Account may be deposited in a money-market fund, short-term treasury obligations, investment-grade commercial paper and other liquid investment-grade investments with maturities of three months or less, with all investment income thereon to be taxable to, and to accrue for the benefit of, Seller. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the escrow account exceeds the required amount of security, the escrow agent may remit any excess to Seller.

3. Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit G-2-Guaranty, from an Issuer with a minimum of net worth of at least \$200,000,000 and a senior unsecured credit rating (unenhanced by third-party support) equivalent to BBB+ or better as determined by all rating agencies that have provided such a rating, and if ratings from both Standard & Poor's and Moody's (or if either one or both are not available, equivalent ratings from alternate rating sources reasonably acceptable to Company). If such senior unsecured credit rating of the Issuer is exactly equivalent to BBB+, the Issuer must not be on credit watch or have a negative outlook by a rating agency. If the credit rating of the Issuer is downgraded or there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer, then Seller shall be required to convert the guarantee provided by such Issuer to a Security Fund instrument meeting the criteria set forth in either sub-paragraph (1) or sub-paragraph (2) above no later than 10 Days after receiving information from or about the Issuer that the Issuer no longer satisfies the requirements of this paragraph.

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(D) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior Notice to Company, *provided, however, that* the Security Fund must at all times satisfy the requirements of this Section.

(E) Company may reevaluate from time to time the value of any Security posted by Seller to determine, in a Commercially Reasonable manner, whether (i) it continues to satisfy the requirements in this PPA or (ii) there has been a change that has a Material Adverse Effect in the creditworthiness of the Issuer or guarantor, such that it does not or with the passage of time, it will no longer satisfy the requirements of this PPA. If Company determines, in a Commercially Reasonable manner, that there has been an event that has caused, or will cause, with the passage of time, Seller's Security to no longer satisfy the requirements of this PPA, then Company shall provide prompt Notice to Seller of such event and after receipt of such Notice, Seller shall be required to provide alternative Security that satisfies the terms of this PPA.

(F) The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the end of the Term. Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

(G) Seller shall reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of any security instruments, and other related documents, used by Seller to establish and maintain the Security Fund pursuant to Seller's obligations under this Section.

Article 12 – Default and Remedies

12.1 Events of Default. Any of the following events shall constitute an Event of Default of the specified Party if such event has not been cured within the cure period specified for such event.

(A) Either Party's failure to make any payment to the other Party as required by this PPA, including invoices pursuant to Article 9, Liquidated Delay Damages, Actual Damages, any required indemnification, or any other required payment, and such amount remains unpaid for a period of 10 Business Days after the date the defaulting Party receives Notice from the non-defaulting Party that the amount is overdue.

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(B) Either Party's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for a Party or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment against it without such authorization, consent or application, which proceedings continue un-dismissed or un-stayed for a period of 30 Days from its inception.

(C) Either Party's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against a Party without such authorization, application or consent, which proceedings remain un-dismissed or un-stayed for 30 Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

(D) Either Party's unauthorized assignment of this PPA or transfer without consent, immediately upon its occurrence and without further notice from the non-defaulting Party.

(E) Any material representation or warranty made by a Party in this PPA that is proven to have been false in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a Material Adverse Effect on the non-defaulting Party immediately upon its occurrence and without further notice from the non-defaulting Party.

(F) Seller's failure to establish and maintain the Security Fund as and in the amounts required that remains uncured for five (5) Business Days after Company provides Notice of Seller's failure.

(G) Seller's failure to achieve Commercial Operation more than 45 Days after the Commercial Operation Milestone, *provided, however, that* if during such period Seller provides a written opinion from a mutually-agreeable independent engineer that the COD can reasonably be achieved within an additional 45 Day period, then Seller shall be allowed a total period not to exceed 90 Days after the Commercial Operation Milestone to achieve Commercial Operation, *provided further that* Liquidated Delay Damages shall have been paid throughout the entire period of delay and that no additional cure period for such default shall be required.

(H) Seller's failure, commencing 24 months after the COD, to deliver at least 85% of the Committed Solar Energy on a twenty four-month rolling average basis utilizing data from the previous twenty four months, *provided, however, that* the calculation of the rolling average shall exclude reduced for foregone generation

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attributable to (i) force majeure; (ii) the measured Solar distribution at the Site for the twenty four month period multiplied by the current power curve of the Facility establishes an available Solar resource at the Facility lower than a one in 20 probability, using best-available data; or curtailment by Company under Section 7.3, and the contribution of such occurrences shall be imputed into the calculation of Committed Solar Energy for the purposes of, and only for the purposes of, establishing a default of Seller under this paragraph, and Seller shall be permitted to add and/or replace Solar Units on the Site if and to the extent reasonably required to cure Seller's default pursuant to this paragraph.

(I) Seller's material breach of the Interconnection Agreement that has a Material Adverse Effect on Company.

(J) The failure of either Party to perform or observe any other material obligation to the other Party under this PPA, that is not excused by Force Majeure and such failure shall remain unremedied for 30 Days after Notice thereof shall have been given by the non-defaulting Party.

122 Remedies. Upon the occurrence of any Event of Default of this PPA, the non-defaulting Party may pursue all rights and remedies available to it at law and in accordance with the terms of this PPA. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein.

(A) Termination and Damages. For any uncured Event of Default, the non-defaulting Party may, at its option do any, some, or all of the following:

1. Offset from any payments due from the non-defaulting Party any amount otherwise due, including any unpaid Liquidated Delay Damages or Actual Damages;
2. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;
3. In the case of an Event of Default by Seller, draw on the Security Fund for any unpaid Liquidated Delay Damages Actual Damages, or any other required and unpaid amount;
4. In the case of an Event of Default by Seller, exercise of Company's Step-In Rights.
5. Terminate this PPA immediately upon Notice without penalty or further obligation to the defaulting Party. Upon the termination of this PPA

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under this Section, the non-defaulting Party shall be entitled to receive from the defaulting Party, subject to the Damage Caps, all of the liquidated Delay Damages and Actual Damages in connection with the Event of Default resulting in such termination.

(B) Liquidated Delay Damages. Prior to the COD, Seller shall be liable to pay Company Liquidated Delay Damages as a liquidated damage and not a penalty for any delay in meeting the Commercial Operation Milestone on the terms and conditions as follows:

1. Provided Seller actually pays Liquidated Delay Damages as and when owed, the payment of such Liquidated Delay Damages shall be Company's sole and exclusive remedy for Seller's failure to achieve, or Seller's delay in achieving the Commercial Operation Milestone. Liquidated Delay Damages shall be payable in lieu of Actual Damages accrued for the period during which Liquidated Delay Damages are assessed. The Parties specifically recognize that Company's damages associated with any delays in achieving the Commercial Operation Milestone will be significant but that it will be difficult to quantify those damages.

2. All Liquidated Delay Damages shall begin to accrue on the Day after the Commercial Operation Milestone as may be extended pursuant to this PPA until the Day after such Commercial Operation Date is achieved.

(C) Actual Damages. For all Events of Default arising after the COD, the non-defaulting Party shall be entitled to receive from the defaulting Party all direct damages proximately caused by such Event of Default ("Actual Damages") incurred by the non-defaulting Party; *provided, however, that* if an Event of Default has occurred and has continued uncured for a period of 365 Days, the non-defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA. If Seller is the defaulting Party, the Parties agree that Actual Damages recoverable by Company hereunder on account of an Event of Default of Seller may include Replacement Power Costs. If Company is the defaulting Party, the Parties agree that Actual Damages may include any direct damages available under this PPA.

(D) Specific Performance. In addition to the other remedies specified in this Article 12, in the event that any Event of Default of Seller is not cured within the applicable cure period set forth herein, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance. By way of example, if the breach by Seller arises from a failure by third party operating the Facility pursuant to an operating agreement entered into with Seller, and Seller fails or refuses to enforce its rights under the operating agreement that would result in the cure, or partial cure, of the Event of Default, Company's right to specific performance shall include the right to obtain an order compelling Seller to enforce its rights under the operating agreement.

123 Limitation on Damages.

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(A) Except as otherwise provided in this Section, (i) Seller's aggregate financial liability to Company for Liquidated Delay Damages and for any termination of this Agreement prior to COD shall not exceed Pre-COD Damage Cap, and (ii) Seller's aggregate financial liability to Company for Actual Damages shall not exceed the Post-COD Damage Cap (collectively the "Damage Cap(s)").

(B) If at any time during the Term, Company incurs damages in excess of a Damage Cap that Seller does not agree to pay when billed by Company, Company shall have the right to terminate this PPA upon Notice.

(C) The Damage Caps shall not apply to Actual Damages arising out of any of the following events:

1. damage to Company-owned facilities caused by Seller's acts or omissions;
2. Seller's intentional misrepresentation or misconduct in connection with this PPA or the operation of the Facility;
3. Subject to Seller's rights in Section 8.1(C), the sale or diversion by Seller to a third party of any capacity or energy committed to Company under this PPA;
4. Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds to restoration of damaged equipment of the Facility following a casualty except to the extent allowed by this PPA;
5. any claim for indemnification under this PPA;
6. any Environmental Contamination caused by Seller in connection with this PPA; or
7. damaged incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(D) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to Actual Damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, equitable or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein); *provided, however, that if*

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either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for, such damages. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

124 Step-In Rights.

(A) Upon the occurrence of an Event of Default, Company shall have the right, but not the obligation, to exercise its Step-In Rights for the period of time until Seller has cured its Event of Default or this PPA has been terminated. Exercising Step-In Rights shall not preclude or limit Company's right to exercise any remedy it has against Seller under this PPA.

(B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions necessary to implement Company's Step-In Rights. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.

(C) Company acknowledges that the Facility Lender may foreclose and take possession of and operate the Facility and Company may be required to relinquish its Step-In Rights in such circumstance. Prior to commencing construction of the Facility, Seller shall obtain the written agreement of the Facility Lender recognizing Company's Step-In Rights as being limited only by foreclosure of the Facility as a result of Seller's material default of its contractual obligations with the Facility Lender.

(D) Company shall implement its Step-In Rights in conformance with Good Utility Practice and shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA. Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights. Company shall give Seller and the Facility Lender 10 Days' Notice in advance of exercising Company's Step-In Rights. Upon receipt of such Notice:

1. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required to construct, operate, and maintain the Facility in accordance with Good Utility Practice.

2. Seller shall give Company, its employees, contractors, or designated third parties unrestricted access to the Site and the Facility.

3. Seller shall cooperate in the implementation of Company's

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Step-In Rights.

4. Company shall use the output generated and delivered from the Facility during such period in partial satisfaction of Seller's obligations hereunder.

(E) Company may draw upon the Security Fund to cover any expenses incurred by Company in exercising its rights under this Section.

(F) Seller shall retain legal title to and ownership of the Facility.

(G) Company shall provide Seller with at least 15 ~~Days~~ Days' Notice of Company's intent to relinquish its Step-In Rights. Company shall relinquish its Step- in Rights on the earliest of (i) termination of this PPA; (ii) Seller has cured all outstanding defaults; (iii) Company's unilateral decision to relinquish possession of the Facility; or (iv) the Parties mutual decision.

(H) Company's Step-In Rights shall not constitute an assumption by Company or any liability attributable to Seller.

12.5 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use Commercially Reasonable Efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the PPA.

Article 13 – Dispute Resolution

13.1 Dispute Resolution.

(A) In the event of any dispute arising under this PPA (a "Dispute"), within 10 Business Days following Notice by either Party, (i) each Party shall appoint a representative, and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the representatives cannot resolve the Dispute within 30 Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to a designated representative of each Party's senior management. Within 10 Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within 10 Business Days after receipt of each Party's Dispute summaries, the senior management representatives for both Parties shall negotiate in good faith to resolve the Dispute. If such senior management representatives are unable to resolve the Dispute thereafter, either Party may seek available legal remedies.

(B) If no Notice has been issued within 24 months following the occurrence of events or circumstances giving rise to the Dispute (regardless of

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the knowledge or potential knowledge of either Party of such events and circumstances), the Dispute and all claims related thereto shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

(C) SELLER AND COMPANY EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS PPA OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND COMPANY RELATED HERETO AND EXPRESSLY AGREE TO HAVE ANY DISPUTES ARISING UNDER OR IN CONNECTION WITH THIS PPA BE ADJUDICATED BY A JUDGE OF THE COURT HAVING JURISDICTION WITHOUT A JURY.

Article 14 – Force Majeure

14.1 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if, and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however, that:* (i) such Party gives prompt Notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resume performance of its obligations under this PPA; and (iv) such Party provides Notice prior to the conclusion of the Force Majeure.

14.2 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure extend this PPA beyond its slated Term.

(C) If Force Majeure affecting Seller continues for an uninterrupted period of 90 Days from its inception (with respect to Force Majeure occurring prior to COD) or 365 Days from its inception (with respect to Force Majeure occurring after COD), Company may, at any time following the end of such period, terminate this PPA upon Notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

14.3 Delays Attributable to Company. Seller shall be excused from performing its obligations under this PPA where Seller can establish that such a failure was caused by (i) any delay or failure by Company either Party to perform its obligations under this PPA, or (ii) any delay or failure by the Transmission Authority to perform its

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obligations under the Interconnection Agreement, in each case whether or not caused by Force Majeure.

Article 15 – Representations and Warranties

15.1 General Representations and Warranties. Each Party hereby represents and warrants to the other as follows, which representations and warranties will be deemed to be repeated, if applicable, by each Party throughout the Term:

(A) It is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party; it has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary corporate action, and do not and will not:

1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);

2. violate any Applicable Law, or violate any provision in any formation documents, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;

3. result in a breach or constitute a default under the representing Party's formation documents or bylaws, or under any agreement relating to its management or affairs or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or

4. result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of the representing Party now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of the representing Party.

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(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

15.2 Seller's Specific Representation. To the best knowledge of Seller, and except for those Permits identified in Exhibit F-Seller's Permits, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Permits, or other action required by any Governmental Authority to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

15.3 Company's Specific Representation. To the best knowledge of Company, and except for the State Regulatory Approval(s) identified in Section 6.1, all approvals, authorizations, consents, or other action required by any Governmental Authority to authorize Company's execution, delivery and performance of this PPA, have been duly obtained and are in full force and effect.

Article 16 – Insurance

16.1 Evidence of Insurance. No later than commencement of construction and then on or before June 1 of each year, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in compliance with the specifications for insurance coverage set forth in Exhibit E-Insurance to this PPA. Such certificates shall (a) name Company as an additional insured (except worker's compensation); (b) provide that Company shall receive 30 Days prior Notice of non-renewal, cancellation of, or significant modification to any of the corresponding policies (except that such Notice shall be 10 Days for non-payment of premiums); (c) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and (d) indicate that the Commercial General Liability policy has been endorsed as described above. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.2. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless of like coverages, if any, carried by Company. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two years after the Term. In the event that any insurance as required herein is commercially available only a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six years after the Term.

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(B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E-Insurance in order to maintain Commercially Reasonable coverage amounts. Seller shall make all Commercially Reasonable Efforts to comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide Notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such Notice, Seller shall attempt to obtain other insurance that would provide comparable protection against the risk to be insured.

163 Application of Proceeds. Seller shall apply any insurance proceeds to reconstruction of the Facility following a casualty.

Article 17 – Indemnity

17.1 Indemnification. Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party (the “Indemnified Party”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses (including attorneys’ fees) for personal injury or death to persons and damage to the Indemnified Party’s real property and tangible personal property or facilities or the property of any other person or entity to the extent arising out of, resulting from, or caused by the (i) an Event of Default or other breach under this PPA, (ii) violation of Applicable Laws, (iii) negligent or tortious acts, errors, or omissions, or (iv) intentional acts or willful misconduct, of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(A) This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Party, but the Indemnifying Party’s liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s negligent or intentional acts, errors or omissions caused the damages.

(B) Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

(C) Nothing in this Section shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

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17.2 Notice of Claim. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article may apply, the Indemnified Party shall Notice thereof to the Indemnifying Party. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however, that* if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

17.3 Settlement of Claim. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

17.4 Amounts Owed. Except as otherwise provided in this Article, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 – Lender Provisions

18.1 Accommodation of Facility Lender. Company shall make Commercially Reasonable Efforts to provide such consents to collateral assignment, certifications, representations, information or other documents, as may be reasonably requested by Seller in connection with the financing of the Facility consistent with the terms set forth in Exhibit I – Consent Provisions (generally, a “Lender Consent”), *provided, however, that* in providing a Lender Consent, Company shall have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement, that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of the Lender Consent and any documents requested by Seller or the Facility Lender, and provided by Company, pursuant to this Section. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender.

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18.2 Facility Lender Notice and Right to Cure. Seller shall provide Company with a Notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such Notice, Company shall provide Notice of any breach or default of Seller to the Facility Lender, and Company will accept a cure performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA.

18.3 Notice of Facility Lender Action. Within 10 Days following Seller's receipt of each Notice from the Facility Lender of default, or Facility Lender's intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of such Notice to Company.

18.4 Officer Certificates. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation, including administrative proceedings before utility regulatory commissions.

Article 19 – Assignment and Other Transfer Restrictions

19.1 Transfer Without Consent is Null and Void. Any sale, transfer, or assignment of the Facility or this PPA made without fulfilling the requirements of this PPA shall be null and void and a breach of this PPA.

(A) Except as permitted in this Section, neither Party shall assign this PPA or any portion thereof, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that (i) at least 30 Days prior Notice of any proposed assignment requiring consent shall be given to the other Party; (ii) any assignee shall expressly assume the assignor's obligations under this PPA unless otherwise agreed by the other Party, (iii) no assignment shall relieve the assignor of its obligations under this PPA in the event the assignee fails to perform, unless the other Party waives in writing the assignor's continuing obligations under this PPA; (iv) no assignment shall impair any security given by Seller unless such security has been replaced in accordance with Section 11.1; and (v) before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

1. Seller's consent shall not be required for Company to assign this PPA to an Affiliate of Company; provided, *however, that Company* shall remain liable for obligations incurred under this PPA unless released in accordance with the terms of this PPA. In the event that a permitted assignee of Company is an entity that provides retail electric service in the State in which the Facility is located and is subject to rate and quality service regulation under the

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jurisdiction of the State Regulatory Agency and has or attains an Investment Grade Seller shall release Company from its obligations under this PPA if Company requests to be so released by Notice to Seller.

2 Company's consent shall not be required for Seller to assign this PPA for collateral purposes, to the Facility Lender. Seller shall provide Company Notice of any such assignment no later than 30 Days after the assignment.

(B) Reserved.

192 Reserved.

193 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Company, *provided, however, that* no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

Article 20 – Miscellaneous

20.1 Notices. Notices required by this PPA shall be in writing and addressed to the other Party, including the other Party's representative on the Operating Committee, at the addresses noted in Exhibit D-Notices as either Party updates them from time to time by Notice to the other Party. Notices shall either be hand delivered or mailed, postage prepaid. If mailed, Notices shall be simultaneously sent by facsimile or other electronic means. Any Notice shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after the close of the Business Day, in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning Facility operations shall be exempt from this Section.

20.2 Taxes and Change of Law.

(A) Seller shall be solely responsible for any and all present or future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility, or any components or appurtenances thereof, any sales or *ad valorem* taxes relating to the Facility, or any taxes on the products and services generated by Seller, sold and delivered to Company at the Point of Delivery. Seller's prices under Section 8 are inclusive of such taxes and impositions during the Term.

(B) Company shall be solely responsible for the payment of any taxes imposed by Governmental Authorities on the Solar Energy purchased under this PPA beyond the Point of Delivery.

(C) The Parties shall cooperate to minimize tax exposure, *provided,*

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however, that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder. All electric energy delivered by Seller to Company hereunder shall be sales for resale, with Company reselling such electric energy. Company shall obtain and provide Seller with any certificates required by any Governmental Authority, or otherwise reasonably requested by Seller to evidence that the deliveries of electric energy hereunder are sales for resale.

20.3 Applicable Law. Each Party shall at all times comply with all Applicable Laws, except for any non-compliance that, individually or in the aggregate, could not reasonably be expected to have a material effect on the business or financial condition of the Party or its ability to fulfill its commitments hereunder.

(A) As applicable, each Party shall give all required notices, shall procure and maintain all necessary governmental permits, licenses, and inspections necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall promptly disclose to the other, any violation of any Applicable Laws arising out of or in connection with the Facility and this PPA.

~~(C) Upon permanent cessation of generation from the Facility, Seller shall decommission the Facility, remove the Facility and remediate the Site as, if and when required by Applicable Laws.~~

20.4 Fines and Penalties.

(A) Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

(B) If fees, fines, penalties, or costs are claimed or assessed against Company by any Governmental Authority due to noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligations, Permit or requirements of Applicable Law, or, if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, Permit or requirements of Applicable Law, Seller shall reimburse and hold Company harmless against any such costs incurred by Company, including claims for indemnity or contribution made by third parties against Company in accordance with Article 17.

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20.5 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this PPA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

20.6 Disclaimer of Third Party Beneficiary Rights. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

20.7 Relationship to Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of Company for any purpose; nor shall Seller represent to any person that he or she is or shall become a Company employee.

20.8 Equal Employment Opportunity Compliance Certification. Seller acknowledges that as a government contractor Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action. Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law, including 41 C.F.R. §60-1.4 (a) (1-7).

20.9 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations, including

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warranties, remedies, or indemnities, that by their nature should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation.

20.10 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however, that* Company and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

20.11 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of any output from the Facility. This PPA, including Exhibits, may be amended, changed, modified, or altered in accordance with the terms of this PPA, *provided, however, that* such amendment, change, modification, or alteration shall be in writing.

20.12 Binding Effect. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

20.13 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

20.14 Counterparts. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.15 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State in which the Facility is located, exclusive of conflict of laws principles. The Parties submit to the exclusive jurisdiction of the state courts of the State in which the Facility is located, and venue is hereby stipulated as the capital city of such State or such other city as mutually agreed to by the Parties.

20.16 Press Releases and Media Contact. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size, type and timing of the Facility, the long-term nature of this PPA, and other relevant factual information about the relationship. Unless otherwise required by Applicable Law or stock exchange requirements (based on the reasonable advice of counsel), neither Party to this Agreement shall make any public

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announcements in respect of this PPA or the Facility without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement. In the event during the Term, either Party is contacted by the media concerning this PPA or the Facility, the contacted Party shall inform the other Party of the existence of the inquiry, any questions asked, and the substance of any information provided to the media.

20.17 Exhibits. Either Party may change the information in Exhibit D-Notices at any time by Notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.18 Confidentiality.

(A) Although this PPA is not Confidential Information, the Parties acknowledge and agree that during the course of the performance of their respective obligations under this PPA, either Party may need to provide information to the other Party, which the disclosing party deems confidential, proprietary or a trade secret ("Confidential Information").

1. Confidential Information shall include all documentation and data, including special techniques, methods, computer programs and software, that the disclosing Party considers proprietary or trade secret and furnishes to the receiving Party and wants the receiving Party to treat as Confidential Information may be designated as Confidential Information by clear and distinct notation on such documentation or by equivalent method, and shall be treated as such by the receiving Party. Documentation and data not so designated need not be considered by the receiving Party to be proprietary or trade secret; *provided, however, that* any and all data and documentation regarding Facility output, performance, outages and similar operational information shall be considered Confidential Information without the need for further designation if any disclosure thereof would be in a form or by a means that associates such data or documentation with the Facility or Seller or any of its Affiliates, or from which a reasonable person could make such an association. The disclosing Party hereby grants to the receiving Party authority to use Confidential Information for the purposes of this PPA, including keeping electronic copies of such Confidential Information. The receiving Party agrees to keep such Confidential Information confidential, except as set forth in this Section, to use it for work necessary to the performance of this PPA, and not to sell, transfer, sublicense, disclose or otherwise make available any such Confidential Information to others; *provided, however, that* Confidential Information may be disclosed by the receiving Party to the agents, employees, advisors, consultants, or potential or actual debt or equity investors of the receiving Party, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this requirement of confidentiality the receiving Party shall be responsible.

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2 Confidential Information shall not include any data or information:

a. Which can be documented was in the public domain as allowed by this Section, or through no fault or action of the receiving Party at the time it was disclosed by the disclosing Party to the receiving Party or at any time thereafter;

b. Which can be documented was independently developed by the receiving Party;

c. Which can be documented was known to the receiving Party from an ultimate source other than the disclosing Party without breach of this PPA by the receiving Party;

d. Which is disclosed by a Party, in connection with such Party's performance of its obligations under this PPA, to its consultants or contractors or other third parties who are in turn subject to a confidentiality agreement with the disclosing Party to treat the information at least with the care required by this PPA; or

e. Which is legally requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process or, in the opinion of its counsel, by Applicable Laws) to be disclosed, *provided, however, that* the Party requested or required to make a disclosure shall promptly notify the non-disclosing Party, no later than five Days of such request or requirement and prior to disclosure so that the non-disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of this Section.

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IN WITNESS WHEREOF, the Parties have executed this PPA.

Seller:

SDSun-11Fall River Solar LLC

By: Manager

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Company:

Black Hills Power, Inc.

By: _____